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IN THE UNITED STATES PATENT OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

IN RE APPLICATION OF:

DANIEL PHARO, ET AL.

SERIAL NO.: 09/758,934

FILED: JANUARY 11, 2001

TITLE: PERSONNEL GUIDANCE
AND LOCATION CONTROL
SYSTEM

EXAMINER: YARITZA GUADALUPE

GROUP ART UNIT NO. 2859

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RESPONSE TO NON-COMPLIANT APPEAL BRIEF
**BOARD OF PATENT APPEALS
AND INTERFERENCES**

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Alexandria, Virginia 22313-1450

Dear Sir:

The applicant in the above-identified appeal is herewith responding to the Notice of Non-Compliant Appeal Brief dated November 8, 2005. The Notice initially states that the brief does not contain the items required under 37 CFR 41.37, or that they are not under proper heading or in proper order. The applicant has examined the rules and has revised the Appeal Brief to incorporate specifically the sections identified and using the titles as proposed. The applicant has also provided an introduction, which was not specified in the Code of Federal Regulations, but which would appear to be helpful. If this presents a problem, the applicant can readily and easily delete same.

Other components of the brief which were apparently not incorporated in 37 CFR 41.37(c)(1)(v) have all been included under the Argument, and it is, therefore, believed that the brief does comply with the requirements. The applicant would appreciate being promptly advised of any further areas of non-compliance, and the applicant will expeditiously and fully attempt to comply with such other requirements.

Dated: January 5, 2006

Respectfully submitted,

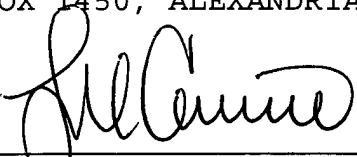


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Date of Signature: January 26, 2006.

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APPEAL BRIEF

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Alexandria, Virginia 22313-1450

Sir:

I.

INTRODUCTION

This Appeal is based on a Final Rejection of the Examiner dated October 21, 2004, in which the Examiner rejected all of the claims in the application, namely, claims 1-13, 15-18, 21, and 24-36, both under 35 USC 112, and 35 USC 102/35 USC 103. Objections were also advanced to the claims. The claims were further rejected on the ground of double patenting.

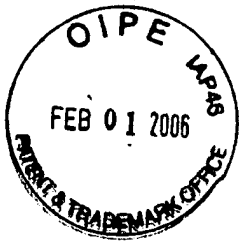


TABLE OF CONTENTS

	<u>PAGE</u>
I. INTRODUCTION.....	1
II. REAL PARTY IN INTEREST.....	2
III. RELATED APPEALS AND INTERFERENCES.....	2
IV. STATUS OF THE CLAIMS.....	3
V. STATUS OF AMENDMENTS.....	3
VI. SUMMARY OF THE CLAIMED SUBJECT MATTER.....	4
VII. GROUNDS OF REJECTION FOR REVIEW ON APPEAL.....	8
VIII. ARGUMENTS ON APPEAL.....	9
A. Non-Merit Rejections/Objections	9
B. Indefiniteness of Claims.....	10
C. Cited Prior Art References.....	10
D. Contrast with the Prior Art.....	12
E. Standard of Review.....	15
F. Nonobvious and New Elements of the Claims...	15
G. The Prior Art Misses Critical Limitations in Claims 1-5 and 25-35, and for that matter, - 6-13 and Claims 28-33 and 35 and 36.....	16
H. The Examiner is Out of Step with the Law ...	22
I. No Suggestion as to Combination.....	29
J. Claims Dealing with Advertising and Promotional Messages.....	32
K. Claims 15-20, 24 and 26 Dealing with Mat Construction Are Not Obvious.....	35
L. Commercial Success.....	38
IX. CONCLUSION.....	40
APPENDIX A (Claims)	A-1
APPENDIX B (Evidence)	B-1
APPENDIX C (Declaration of Dan Pharo Under 37 C.F.R. 1.132 dated 8/17/99, inclusive of Exhibits A-I).....	C-1



II.

REAL PARTY IN INTEREST

The real parties in interest in this application and the subject matter of this application are the inventors, namely, Daniel Pharo and Alex J. Hembree, as well as a California corporation owned substantially by the two of them, known as Next Systems, Inc.

For purposes of this appeal, since the corporation is essentially owned, for all real purposes, by the two inventors, they are the real parties in interest.

III.

RELATED APPEALS AND INTERFERENCES

The application on appeal herein is closely related to the following two U.S. patent applications containing very similar subject matter, and which are also contemporaneously on appeal herewith.

Serial No.	Filing Date	Title
10/635,871	August 5, 2003	Personnel Location Control System with Informational Message Presentation
10/633,480	August 1, 2003	Personnel Guidance and Location Control System

IV.

STATUS OF THE CLAIMS

- 1) Claims 1-13, 15-18, 21, and 24-36 are pending in the application and all stand rejected. No claims are allowed:
- 2) Claims 1, 6, 25, 28, 29, 35 and 36 were objected to because of alleged informalities.
- 3) All of the claims in the application were rejected under 35 USC 103(a) on the basis of the Hensler et al. patent No. 5,637,378 in view of the Bloom U.S. patent No. 6,219,876, the Young patent No. 4,663,871 and the Gehweiler patent No. 3,453,667 and the Ney et al. patent No. 6,319,592.
- 4) Claims 1-36 of this application were rejected on the grounds of double patenting, with claims 1-32 of application Serial No. 10/633,480.
- 5) All claims were rejected and are being appealed.

V.

STATUS OF AMENDMENTS

An amendment, identified as "Amendment D" was mailed to the U.S. Patent and Trademark Office on April 21, 2005. That Amendment was after the Final Rejection, but entry thereof was denied in an Office Action dated May 3, 2005. Thus, the claims in issue are

those presented in the applicant's Amendment C. The claims in applicant's Amendment C are the same claims identified in paragraph I of this Brief and are the claims which are present on Appeal.

VI.

SUMMARY OF THE CLAIMED SUBJECT MATTER

A personnel guidance and location control system for guiding a group of walking pedestrian individuals into a line in order to control movement of the pedestrian individuals while they advance toward an end-of-the-line position and usually a destination in advance of, or beyond, that end-of-the-line position. In this case, the control system is highly effective in controlling the movement of a large number of people in a desired pathway. The user of the system can define the area to constitute the pathway and cause people to walk in that pathway to reach an end-of-the-line position, all in the absence of painted lines, and in the absence of the standard poles and ropes. In this case, there is a substrate having a plurality of spaced apart lines of path forming elements on the substrate, as well as an end-of-a-line position defined by an end-of-the-line element which extends between ends of the rows of path forming elements where the individuals wait to advance to a destination.

The invention also relates to the use of images on the substrate which are effective as sales or advertising messages, or for that matter, informational messages. This structure, for example, is best illustrated in Figures 4-14 of the drawings.

The invention also describes the use of path forming movement direction indicator elements which define the direction of movement, as well as the use of illustrative advertising or promotional, or other informational messages. For example, the path forming elements, themselves, may adopt the form of advertising promotions. As a simple example, spark plugs could be used to define the path forming elements and/or movement direction indicator elements.

The use of the path forming elements and the end-of-the-line positions with multiple substrates is shown in Figures 1 and 3 of the drawings. The use of the promotional materials is best illustrated in Figures 8 and 9 of the drawings. In addition, the use of pathways to guide a group of people in individual paths is more fully described on page 20, lines 14-27, and page 21, lines 1-16. The contrast with the prior art systems is described on page 1, lines 17 through 27, and page 2, lines 1 through 18. The use of the message presentation, which includes advertising and promotional messages, is more fully described, for example, on page 28, lines 26 and 27, and page 29, lines 1-11, and further described on page 29, lines 12-26, and page 30, lines 1-16.

There is also an additional embodiment of the invention in which there is a suitable mat construction, which is effective in guiding individuals in a pathway to an end-of-a-line position and also presenting advertising or promotional messages thereon. This system relies upon plural layers of materials which are laminated together. As a simple example, one such preferred mat construction can be found on page 25, lines 1-27 of the Specification. This aspect of the invention is also described on pages 26 and 27 of the invention. In essence, this aspect of the invention relies upon an upper layer 50 formed of a polycarbonate material and a lower layer formed of an acrylonitrile butadiene-styrene copolymer. This construction provides the desired degree of flexibility to the mat and also the necessary rigidity provided by the rigid polycarbonate material. It also operates effectively to grip a floor surface.

Specifically, Claim 1 of the application calls for a guiding and location control system for guiding pedestrian individuals into a line and controlling movement thereof. This guidance and location control system is comprised of:

- 1) a ground cover substrate, such as a mat;
- 2) there is an end-of-a-line element on a upper surface of the substrate defining a position where pedestrian individuals will wait their turn to move to a destination.

- 3) there are discrete path forming elements extending from the end-of-the-line element on opposite sides thereof to define the pathway.
- 4) there are movement indicator elements on the pathway to define the direction of movement of the individuals.
- 5) the width of the pathway is sufficiently narrow so that individuals will not be inclined to walk in front of an individual who proceeds them.
- 6) the various elements on the ground cover substrate will not create walking hazards or interference with movement or of wheelchairs and the like.

The claims of the application are important in that they define a complete guidance and location control system sufficient to induce pedestrian personnel to enter in the pathway and follow the pathway to the end-of-the-line position and a destination in advance of that end-of-the-line position.

Claim 32 is a method claim for guiding a group of walking pedestrian individuals in a pathway toward an end-of-the-line position where they may wait and then advance to a destination beyond the end-of-the-line position. The method claims specially call in general terms for:

- a) providing the ground cover substrate;
- b) defining the end-of-the-line position;

- c) defining the pathway of movement with discrete elements on opposite sides;
- d) the plurality of movement indicator elements.
- e) an inducement of the individuals to enter the pathway.
- f) maintaining the width sufficiently narrow so that individuals will not be inclined to walk in front of an individual who precedes them.

VII.

GROUND OF REJECTION FOR REVIEW ON APPEAL

- 1) Whether or not Claims 1, 6, 25, 28, 29, 35 and 36 are confusing in the use of individuals proceeding to a destination in advance of the front end of the line.
- 2) Whether or not Claims 1-14 and 25-35, drawn to the specific personnel guidance and control system, as defined, are patentable over the Hensler patent taken alone and in combination with the Hensler et al. U.S. patent No. 5,637,378, taken alone and in view of the Bloom U.S. patent No. 6,219,876 and the Gehweiler et al. U.S. patent No. 3,453,660 and the Young U.S. patent No. 4,663,871.
- 3) Whether Claims 6-20, dealing with the use of interchangeable informational messages is patentable over

the previously cited references, particularly, the Hensler et al. patent and the Bloom patent.

- 4) Whether or not Claims 13 and 15-18, 24 and 26 are patentable over Hensler et al., taken in combination with Bloom and Gehweiler and also the Ney et al. U.S. patent No. 6,319,592, or the Sanders U.S. patent No. 5,123,130.

VIII.

ARGUMENTS ON APPEAL

A. Non-Merit Rejections/Objections.

The claims in the application were rejected in that each of the claims used the language to the effect that the system and the method controlled movement of individuals while advancing toward an end-of-a-line position so that they can reach a destination in advance of that end-of-the-line position. The Examiner took the position that this language was confusing inasmuch as a position in advance of the end-of-the-line would be a position located before one reaches the end of the line, and not after one reaches the end of the line. The applicants filed an Amendment After Final Rejection attempting to alter this language to recite that the destination was beyond the end of the line. However, the Examiner refused entry because the word "beyond", compared to the term "in advance of" raised new issues. The applicant is at a complete loss to understand how terminology, such as "beyond" in place of "in

advance of", generates a new issue which would require further searching and/or investigation. Nevertheless, because the refusal to enter the Amendment seemed so superfluous, at least to the applicant, no further amendments were made to attempt to obviate informalities, since they would also likely be refused entry.

B. Indefiniteness of Claims.

The claims in the application were also rejected over the claims of the two earlier identified co-pending U.S. applications of the same applicants. The applicants can and will submit Terminal Disclaimers to overcome the double patenting rejections upon the finding of allowable subject matter. The filing of a Terminal Disclaimer should obviate any objection with regard to double patenting.

C. Cited Prior Art References.

The references cited relied upon the Examiner in the final rejection include:

Hensler et al. U.S. patent No. 5,637,378

Blum U.S. patent No. 6,219,876

Young U.S. patent No. 4,663,871 and

Gehweiler et al. U.S. patent No. 3,453,660

Sanders U.S. patent No. 5,123,130

Ney et al. U.S. patent No. 6,319,592

(1) Hensler et al. U.S. Patent No. 5,637,378:

The Hensler et al. U.S. patent No. 5,637,378 relates to a floor mat which has a phosphorous boarder. The patentee describes the purposes of the borders to make the mat edges visible in the event of a power failure. The mat is a generally rectangular mat having a center section and with a pair of borders extending along the mat for the full length thereof.

(2) Blum U.S. Patent No. 6,219,876:

The Blum U.S. patent No. 6,219,876 discloses a floor mat having a recess portion to receive a graphic display, such as the word "Welcome", and which is covered by a transparent cover sheet.

(3) Young U.S. Patent No. 4,663,871:

Young deals primarily with a lenticular screen. Probably the most relevant embodiment is that shown in Figure 3 dealing with a road sign 10. The screen is designed so that no artificial illumination is required to view the same, either in the daylight or the nighttime. The display in the Young patent is designed for vertical disposition, such as, for example, a typical road sign. Although there would probably be little reason to use this device on a horizontal surface, such as a floor, it could, nevertheless, be used in that fashion if light was directed in a proper fashion.

(4) Gehweiler et al. U.S. Patent No. 3,453,660:

The Gehweiler et al. U.S. patent No. 3,453,660 was primarily cited for the teaching of the pairing in Figure 2 in which circular

vinyl markers 99 are adhered by a pressure-sensitive adhesive to a so-called "belt" and beyond this limited teaching, the patent relates to machines for removing and applying adhesive markers to a liner.

(5) Sanders U.S. patent No. 5,123,130:

The Sanders U.S. patent No. 5,123,130 was cited to show a walkway comprised of a plurality of longitudinally aligned elongate flexible mats, including illuminated characters, such as footprints. In this case, the mats are laid on a floor within a hallway and through a doorway leading to a commode.

(6) Ney et al. U.S. Patent No. 6,319,592:

The New patent discloses another floor mat which is provided with a protective transparent upper layer containing a graphic display beneath that upper layer. Beyond this, in Ney et al., there is no guidance path for a group of individuals, and more importantly, there is no end-of-the-line element. There is also no teaching about individuals walking in a pathway and constantly seeing various messages.

D. Contrast with the Prior Art.

The present application relates primarily to a personnel guidance and location control system for moving a group of pedestrian individuals in an orderly and precise pathway to an end-of-a-line position, and, thereafter, to a destination in advance of or beyond that end-of-the-line position. As a simple example, if

a group of individuals were waiting in a line to walk to a cashier's kiosk, or other location, or if a group of individuals were standing in a line at a pharmacy awaiting their turn to talk to the pharmacist or clerk, they would reach an end-of-a-line position well in front of, the position of the kiosk, in the first example, and the pharmacist or clerk in the second example. When the individual at the kiosk or pharmacy had finished their transaction, the next person at the front end of the line would move to that kiosk or pharmacist or clerk, which constitutes the destination.

Heretofore, the only ways in which individuals were guided in an organized or somewhat orderly path was with the use of painted lines on a ground surface, or, otherwise, the conventional poles and ropes arrangement. However, each of these systems brought their own problems. In the case of the painted lines, it was virtually impossible to use that system in an indoors location where there is expensive floor coverings, such as carpets, or the like. In an external environment, the lines are quickly destroyed by weathering. With ropes and poles, it is necessary to constantly locate the polls and ropes each morning when an institution opens and bring same inside when the institution closes. Moreover, people tend to damage particularly the ropes necessitating replacement. Even more so, the ropes and poles do not always necessarily provide the needed organization, inasmuch as they are

frequently, inadvertently or unintentionally, moved by parties waiting in the line.

The applicants have found a very unique, highly effective system for moving a large number of people in a defined pathway to an end-of-a-line position, and, thereafter, to a destination in advance of that end-of-the-line position.

The Examiners, over the years, in this and the two related applications, have cited myriads of U.S. patents in an attempt to anticipate or render obvious the claims regarding this aspect of the invention. They have relied upon references showing fire escape routes, traffic patterns for automobiles, and even an airplane runway and end of the runway lights and lights on the side of the runway to alert the pilot if he or she is getting too close to the edge of the runway.

Applicants have successfully defended against the vast majority of these references, and, therefore, the Examiner has now relied upon a conventional floor mat, taken alone and in combination with another reference dealing with a fire escape route. This is the gravamen of the Examiner's rejection. In short, the Examiner has paid little or no attention to the fact that there must be some basis to combine the references cited, and, moreover, and more importantly, the fact that they must fully meet the claimed limitations. These references cannot in some vague way suggest the obviousness of the invention.

E. Standard of Review.

This reviewing Board is required to review the Examiner's analysis of rejection to determine if the claim has been correctly construed as to the scope and meaning of each contested limitation. See Gechter v. Davidson, 116 F.3d 1454, 1457, 43 USPQ2d 1030, 1032 (Fed. Cir. 1997). Every limitation positively recited in a claim must be given effect in order to determine what subject matter that claim defines. In re Wilder, 429 F.2d 447, 450, 166 USPQ 545, 548 (CCPA 1970).

F. Nonobvious and New Elements of the Claims.

Applicants assert that this application contains a unique, nonobvious "end of a line" element, which is not taught by any prior art. This element is yet more unique and nonobvious, due to the fact that its purpose is not to halt traffic flow indefinitely, but to provide a waiting area for persons to be conveyed, in an orderly, singular fashion, to a further point.

Applicants also assert that the guidance elements in the instant application are unique in their ability to be easily altered. It is also urged that the prior art of record does not show a plurality of guidance elements arranged to form a pair of paths sufficiently narrow to guide a group of individuals.

The Examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a prima facie

case of unpatentability. In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

Applicants assert that the Examiner has just not met this initial burden.

Applicants also assert that the limitations set forth in the claim have not been given sufficient effect. Applicant asserts that, instead of giving the claim limitations proper effect, the Examiner has erroneously inferred that certain limitations are taught in the prior art, in order to arrive at its rejection.

G. The Prior Art Misses Critical Limitations in Claims 1-5 and 25-35, and for that matter, 6-13 and Claims 28-33 and 35 and 36.

The rejection, based on the grounds of Hensler et al. patent and the Blum patent, in combination, and even with the Gehweiler patent, do not and cannot respond to the limitations in the above-rejected claims. Specifically, these claims call for the spaced apart small, discrete elements which identify the lines of path forming elements. Even if the Hensler et al. patent disclosed the limitations relating to the discrete spaced apart small path forming elements, and that is a real stretch in Hensler et al., there is nothing which even remotely suggests the end-of-the-line element. It would be preposterous to contend the edge of the floor mats of Blum or Young is the end-of-the-line element. Finally,

there is nothing which suggests the use of the direction indicating elements.

(1) Hensler Misses an End-of-Line Element and Other Limitations:

The Examiner in relying upon Hensler et al., notes that Hensler teaches the following elements:

1. Floor mat with an upper surface and borders (path forming guidance elements 16 and 18) for indicating a path therebetween.
2. The substrate having path forming guidance elements form parallel pathway boundaries in a desired orientation, said upper surface of said substrate being relatively free of elements that would obstruct the prominence of the pathway, said pathway being visibly prominent, the path forming guidance members being arranged to be visible in low and high light conditions, the pathway being visibly prominent and of a carpeting material.

The Examiner admits, however, as follows:

That Hensler et al. does not teach of the following:

"(1) An end of line element being an elongated element with indicia; (2) said end of line element being associated with the substrate and the path forming guidance elements; (3) the discrete path forming members associated with the upper surface of the substrate, being on opposite sides of said substrate and perpendicular to the end of line element and being in a pair of rows and extending from ends of the path forming guidance elements; (4) the rows are of sufficiently narrow width defining a narrow pathway with respect to the group and that of a car; (5) a plurality of movement indicator elements on said pathway of movement between the spaced apart pathway boundaries and being presented in such manner to depict the direction of movement in that pathway; (6) said movement indicator elements cooperating with the path forming members to present a desired pathway and a direction of movement to an end of a line position; and (7) to a

destination in advance of that end of the line position;

In fact, the Abstract set forth on Hensler does not refer to any end of a line position, or any of the other missing elements, describing the patented item as "Floor mats and methods for producing such mats having wear resistant phosphorescent borders that emit light after removal of ambient light. . ."

(2) Gehweiler Does Not Teach an "End-of-a-Line" Element:

The Examiner relies upon Gehweiler to teach ". . . that die cut members are an alternative means for designating a walkway, as compared to the means of Hensler et al. and to allow retrofitting of previously made substrates in order to save costs and in order to allow the user more selection in the type of substrate desired."

There is nothing in the four corners of Gehweiler et al. to suggest that these die-cut members would be used as (1) guidance elements in a pathway; (2) located in spaced apart pairs; and (3) to cooperate with an end-of-a-line element located perpendicularly to the rows of guidance elements.

(3) Blum Does Not Teach the Missing Elements:

Blum describes a floor mat having words, such as "Welcome" or "Hello". It is a real stretch to suggest that

this is an end-of-a-line element where people wait for a person in front to move to a destination. It is certainly true that such this mat could be placed at the end of a line, or for that matter, anywhere else. Blum certainly does not suggest such. However, the purpose of such an "end of a line" element as set forth in the instant application, i.e., to hold and further organize persons to convey them to a yet-further destination, is not described by Blum, taught by Blum, nor is it obvious from Blum.

Therefore, the Examiner's conclusion that, it would have been obvious to modify Hensler et al. by including a presently invisible end-of-a-line element of Blum (wherever that may be) on the substrate of Hensler for the purpose of indicating a waiting position is just not accurate. However, for the purposes of this application, this conclusion is irrelevant, in that the unique use of the end of a line element, for example, as contemplated by the instant application, is not contained in any of the prior art, nor is it anticipated by the Examiner's analysis.

It is difficult, if not virtually impossible, to find an end-of-a-line element in the Young patent No. 4,663,871. Young is another patent dealing with a control of automobile traffic and not related to the movement of a group of pedestrian individuals to a

position where they may wait and then proceed when a destination is available. Moreover, the signs in Young, if they contain an end-of-the-line position at all, which they do not, are vertically arranged and not for disposition on a floor surface. In essence, there is no end-of-a-line position in Young.

The Examiner also relies upon another floor mat in the Ney et al. U.S. patent No. 6,319,592. This mat is provided with a protective transparent upper layer containing a graphic display beneath that upper layer. Beyond this, and within the four corners of Ney et al., there is no guidance path for a group of individuals, and more importantly, there is no end-of-the-line element.

(4) There Has Been an Unjustified Wholesale Dismissal of Important Claim Limitations:

The heart of the matter, in fact, is the Examiner's characterization of the intended uses of the of item, particularly with regard to Claims 1, 22 and 28.

The Examiner has stated that the suggested intended uses have not been given any patentable weight since she is only looking for structural limitations.

The Examiner relies upon a single word in support of its analysis, to wit, the use of the "whereby" clause.

H. The Examiner Is out of Step with the Law.

Starting with Graham v. John Deere Co., 148 USPQ 466-467, the Supreme Court requires this Board to examine the scope and content of the prior art and determine the significance and important difference between the prior art and the claims at issue. This must be resolved against the level of ordinary skill in the art and against the background of the invention. This is a new invention. It has solved a problem, which has not heretofore been solved, and moreover, it has solved that problem in a very simple and straightforward way. (See also Sakraida v. Ag. Pro., Inc., 425 US 273.).

It is also the law that an inventor may obtain a valid patent on the basis of his seeing results unappreciated in the prior art. Tilghman v. Proctor, 102 US 707, 26 L.Ed. 279 (1881). It is apparent that no one else has provided a system for guiding a group of individuals in a pathway to an end-of-a-line position and then a destination in advance of that end-of-the-line position. If such had existed, the Examiner would have at least cited one reference to this effect. None exists.

It was also noted, for example, in Molinaro v. Burnbaum, et al. 201 USPQ 83 (1977) that an ornamental hangar could be used as a Christmas tree ornament. It was also interesting to note that in that case the Court held that the invention itself cannot be used

to provide hindsight in determining obviousness. In essence, that is what is happening in the present application.

The Examiner contends that the invention is now obvious in view of bits and pieces of other prior art references, without, in any fashion, showing how these references would provide a system of mats arranged in such manner as to guide a group of individuals in a desired pathway to an end-of-a-line position and then to a destination in advance of that end-of-the-line position. The Examiner merely takes the position that in some, unstated way, all of these bits and pieces of Hensler et al., Gehweiler et al., Chien, Phillips, and Schnee would all be combined to reach this unique result. The courts have long held that:

In the case of Colt Industries Operating Corporation v. Index-Werke KG, USDC 1979 (205 USPQ 990) that:

"In deciding the question of obviousness under 35 USC § 103, it is not realistic to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such references fairly suggests to one of ordinary skill in the art. Application of Lunsford, 357 F.2d 380, 384, 148 USPQ 716, 719-720 (CCPA 1966); Title Council of America, Inc. v. Ceramic Tilers Supply, Inc., 257 F.Supp. 339, 341-42, 149 USPQ 398, 400-402 (S.D. Cal. 1965), aff'd 439 F.2d 1124, 169 USPQ 268 (9th Cir. 1971). Mere existence in the prior art of individual elements of a patented invention does not without more, invalidate the patent under 35 USC §103. There must be positive evidence that the bringing together of such elements would have been obvious to a person of ordinary skill in the art. As the Second

Circuit has observed: "It would reduce patent protection almost to a nullity if an infringer could, in the light of a subsequent disclosure, comb the prior art and piece together portions of earlier patents, while dropping other parts, and thereby invalidate a new combination of old elements." Bragg-Kliesrath Corp. v. Farrell, 36 F.2d 845, 850 (d Cir. 1929).

In short, the Examiner has taken Hensler et al. and uses the mat of this referenced to suggest that because of florescent stripes, it will be obvious to combine the dots of Gehweiler et al. to form guidance paths. Gehweiler et al. is concerned with the making of these dots and suggests nothing about application to a floor mat, much less a floor map having stripes along the sides. Gehweiler et al. is not even remotely concerned with forming guidance paths. Consequently, the Examiner's rejection must fail at this starting point.

It is noteworthy that the solution to a problem is simple, or appears so when viewed in retrospect. It does not mean that the solution was obvious at the time it was conceived. See for example, Ellipse Corp. v. Ford Motor Co., 452 F2d 163, 171 USPQ 31. To the contrary, it is evidence of invention. In any event, continuing with the rejection of the Examiner, the Examiner then applies Chien to show apparently the equivalent of an end-of-the-line element. In reality, there is no end-of-the-line element, and in fact, the Examiner has never once stated what in Chien constitutes the end-of-the-line element. Chien was merely applied

in some vague fashion, presumably to suggest that maybe, somehow and with a little magic thrown in, there is an end-of-the-line element. The only thing that the applicants can determine from Chien is that there is a fire escape exit with a door. That is hardly the equivalent of an end-of-a-line element where people wait. People are going to use their utmost efforts to evacuate that building quickly in the event of a fire. They are not going to wait for anything.

It has also been held that it is not enough to invalidate a patent to show that separate elements exist in the prior art. The courts have recognized that "the key question is whether it would have been obvious to one of ordinary skill in the art to bring them together." See, for example, Wilden Pump & Engineering Co. v. Pressed & Welded Products Co., USDC (N.CA.) 199 USPQ. 199 USPQ 390. See also, for example, United States v. Adams, 383 US 39, 148 USPQ 79 (1966), ITT v. Raychem Corp., 538 F.2d 453, 191 USPQ 1 (1 CIRC, 1976).

It becomes apparent that after seeing this invention, because the invention is simple, the Examiner concluded that it was obvious. As stated in Rohm and Haas Company v. Owens-Corning Fiberglass Corp., 196 USPQ 726, D.C.N.AL (1977):

"The courts have long recognized that many of the most important inventions appear simple and self-evident after they have been explained. But hindsight is recognized to be misleading and should not be relied upon to invalidate a patent, Diamond Rubber Co. v.

Consolidated Tire, 220 U.S. 428, 435 (1911); Arnold Pipe Rentals Co. v. Engineering Enterprises, Inc., 350 F.2d 885, 890, 146, USPQ 415-416, 419-420 (5th Cir. 1965); Duo-Flex Corp. v. Building Service Co., supra, at pages 96-97, 138 USPQ 543.545."

See also, Molinaro v. Burnbaum, et al., supra, "the invention itself must not be used to provide hindsight in determine obviousness." Reiner v. I Leon Co., Inc., 285 F.2d 501, 503-4, (128 USPQ 25).

The Examiner takes the position that the use of "whereby" makes what follows a functional limitation, and thus, does not have sufficient patentable weight relying upon case law to the effect that a functional "whereby" statement does not define any structure and accordingly can not serve to distinguish.

The Examiner's error here is to characterize the instant application as being identical to the prior art, but merely utilized in a different manner. This is not the case. The Examiner has not pointed to a single piece of prior art that contains a "holding area," designed to retain persons, and direct them to a further point, in a controlled manner. This is not a difference in intended use. This is a structural limitation, and does not fall within the Masham analysis.

In addition, the Examiner contends that the preamble is not accorded any patentable weight where it merely recites the purpose of the process or intended use of a structure. However, all of the

critical limitations in issue are clearly set forth in the body of the claim. Moreover, reference is made in the body of the claims with respect to the terms in the preamble; and, therefore, they should be properly included. Consequently, to dismiss the preamble is to dismiss the entire claims.

The Examiner also contends that the claims contain all functional language and therefore summarily dismisses same. Although the claims in issue do not contain pure "means clauses", they are effectively written as a type of means clause by merely defining the element and the function of that element. This is not improper. The courts had held, and particularly in Stearns v. Trinker & Rasor, 252 F.2d 589 (9th Circ. 1957)

"While an element in a claim for a combination may be expressed as a means or step for performing a function without recital of structure, material or acts in support thereof; the structure, material, or acts must be described in the specification, and if so described, the claim will be construed to cover that which is described and the equivalents thereof. But the structure need not as well be recited in the claim." pp.597-598.

It has been held in Saf-Gard Products, Inc. v. Service Parts, Inc., 532 F.2d, at 1272:

"Also, the defendants' argument that mechanical engineering students would be able to analyze the Brunton shoring device is irrelevant,. This court, in Saf-Gard Products, Inc. v. Service Parts, Inc., supra, 532 F.2d at 1272, stated: "(t)his court has made it clear, moreover, that an invention will not be denied a patent because it

embodies a solution which seems simple and obvious with the benefit of hindsight." Thus, even a minor change may produce a patentable invention, where the result could not have been predicted beforehand by one skilled in the art."

It was also held that a finding which picks out one element in a prior art patent and another element in another prior art patent as a demonstration of anticipation is manifestly insufficient to overcome the presumption [of validity] arising from the issuance of a patent. Santa Fe-Pomeroy, Inc. v. P&Z Co., 569 F.2d 1094.

It becomes apparent that one of the crucial points in this rejection is that the Examiner contends the claims use functional language, as opposed to structural language. The irony is that there are very few components necessary to use in the present invention. However, those components do co-act in a unique way to control individuals in an orderly, precise manner. If this is functional language, the references of record sure do not show this feature. In short, the Examiner seems all too ready to dismiss the claims on the grounds that the limitations are functional. The applicant has claimed all of the salient elements of the invention, and notwithstanding, the Examiner has not cited one reference or references in combination which even remotely suggest this system.

Limitations to the effect of rows of discrete elements forming a pathway are not functional, an end-of-the-line element is not functional, a destination in advance of the end-of-the-line element is not functional. A pathway of a size limited to preclude people

from stepping in front of others is not functional, etc. The Examiner labels everything functional and then dismisses practically all of the limitations on the grounds that they are functional.

I. No Suggestion as to Combination.

As indicated previously, it is a long-standing principle in the law, that the Examiner cannot find bits and pieces and merely suggest they can be combined. See for example, Colt Industries v. Index-Werke 205 USPO 990 (1979). Yet, there is a serious issue as to whether or not there is even any suggestion as to a combination. Hensler does not disclose small, discrete elements, and even if Gehweiler did, one must wonder how those small, discrete elements in Gehweiler would find their way into the Hensler et al. mat. What is the suggestion to place those dots in the already blamed Hensler floor mat, other than to improve the aesthetics. Even more so, since there is no end-of-the-line element anywhere in any of the references, one must now wonder how the Examiner meets the limitations of these claims. In reality, the Examiner cannot meet these limitations.

The courts have recognized that in order to defeat a patent, a prior publication must describe the invention in such full, clear and exact terms as to enable any person skilled in the art to which it relates to practice the invention without the exercise of inventive skill of his own and without assistance from the patent

claimed to have been anticipated. Moreover, when attempting to combine references, the same courts have recognized that with regard to combining references in an attempt to support an attack on a patent under 35 USC, § 103, there must be positive evidence - a teaching or at least a suggestion in one or more of the references that such combining would be desirable thing to do. See, for example, Racal-Vadic, Inc. v. Universal Data Systems, D.C.N.AL (1980) 207 USPQ 902.

The courts have also recognized that "a finding which . . . picks out one element in one prior patent and another element in another prior patent is manifestly insufficient to deny patentability. See, for example, Lawrence v. The Gillette Company, et al., 203 USPQ 732 (USCA 9, 1979).

In ITT v. Rey Chem Corp., 538 F.2d, 453, 191 USPQ 1 (1st Circ., 1976), the Court held that:

"It is not enough to invalidate a patent to show that its separate elements exist in the prior art, the key question is whether it would have been obvious to one of ordinary skill in the art to bring them together."

The applicants again raise the question if it would have been so obvious, then why has not this system been proposed, or at least found in one reference? This fact alone demonstrates that it is a patentable invention.

It has further been held that "It is not enough to invalidate a patent to show that its separate elements exist in the prior art,

the key question is whether it would have been obvious to one of ordinary skill in the art to bring them together." United States v. Adams 383 US 39 148 USPQ 479, as well as numerous cases as cited therein in support of this proposition.

It is interesting to note, that in large measure, the Examiner has taken bits and pieces from various divergent systems and made suggestions that, in some way or another, they can be combined. The Examiner does not have the luxury to merely pick and choose elements existing in the prior art without some basis for combination. As another example, Hensler et al. discloses a floor map and Blum discloses a floor mat welcoming people. The Examiner conveniently argues that there is a suggestion to combine. Nevertheless, even if the "Welcome" or "Hello" sign of Blum were combined with the Hensler floor mat, there would be nothing to suggest lines of discrete elements forming a pathway, and more importantly, there is the obviously missing end-of-the-line element.

The Examiner has also missed the important limitations. There is also nothing in the art of record which discloses the fact that the width of the pathway should be sufficiently narrow to preclude individuals from walking in front of one another. The Examiner dismisses these limitations on the grounds that the width is only considered to be an optimum value for the width of a pathway. This

obvious answer effectively demonstrates that the Examiner has cited no reference showing, for example, at least this limitation.

The most salient point about this Appeal with respect to Claims 1-5 and 25-36 is the fact that the Examiner has not found one reference, or any group of references in combination, which even remotely suggest the concept of guiding a group of pedestrian individuals in a pathway in an orderly and organized fashion and with a pathway designed to conform to an existing environment and to guide the pedestrian individuals in that pathway to an end-of-the-line position and then a destination beyond that end-of-the-line position. As indicated previously, over the years, there have been a very large number of references cited and none deal with this basic concept. The Examiner would dismiss the basic concept of the present invention by finding bits and pieces of other floor mats, to suggest that they would define a way of guiding a group of pedestrian individuals. However, none suggest the formation of a pathway leading individuals in a path of limited width to an end-of-the-line position, and then, in an orderly manner, to a destination in advance of that end-of-the-line position.

J. Claims Dealing with Advertising and Promotional Messages.

As indicated previously, the Examiner essentially dismisses Claims 6-18 and 21 on the basis of prior art dealing with a floor mat, e.g., Hensler et al. and the Blum patent and the Ney patent, with the latter being supplied to show the interchangeable message

presentation on the floor mat. Essentially, Gehweiler et al. and Sanders and Young were thrown in to allegedly meet the missing limitations. However, it is apparent that there are no path forming elements on opposite sides of the pathway to define the boundaries of movement of the pedestrian individuals in the line. There is also the missing critical end-of-the-line element. In substance, the Examiner dismisses limitations in these claims on the basis of a floor mat, such as Hensler et al., with another reference, such as Blum, to show a message. In so doing, the Examiner does not have any prior art to show the following:

- (1) lines of path forming elements which define the boundaries of movement of the group of individuals;
- (2) an end-of-a-line position for the individuals to wait to move to a destination; and
- (3) messages in a specific defined pathway which are constantly reinforced, since the individuals walking on that pathway are constantly reminded of the messages when they happen to look downwardly at the mat.

With regard to Claims 6-18, 21 and 24-27 dealing with the first informational message and the second informational message, and where the second informational message is substitutable for the first informational message, for this respect, the Examiner only

relies upon the Blum patent No. 6,219,876. The Blum patent only discloses a floor mat having an informational message, such as "Welcome", covered by a transparent overlay. Beyond this, the Blum patent would appear to have little relevance to the instant application. The applicants admit that one could remove the overlay and change the message. Beyond this, Blum is almost completely silent as to the system defined in the instant application, which calls for a substrate having a first layer with a transparent portion allowing an informational message to show therethrough and which allows for a second informational message.

Admittedly, the Ney et al. U.S. patent No. 6,319,592 also discloses a decorative floor mat which may be used with a chair. It also has a plural layer construction with the various layers laminated together. However, beyond this, the references are silent with respect to a location guidance and control system. It is one thing to argue that there are floor mats with messages presented on the surface thereof, a factor readily admitted by the applicants. However, the use of informational messages on a complete pathway is an entirely different matter. In the case of a floor mat, an individual usually walks up, for example, to a doorway, perhaps knocks on the doorway, and then walks in. Frequently, the individual will wipe his feet on that floor mat. It is doubtful if the individual rarely, if ever, looks at the message on that floor mat.

The system in the instant application is in complete contrast to that disclosed, for example, in Blum or in Ney et al. When the informational message is presented in a walkway, an entirely different result arises. In this case, the individual may be confronted with one message which is duplicated along the length of the pathway, or he or she may be confronted with different messages, and, again, these messages may be in the form of informational, promotional and advertising messages. Nevertheless, while walking in a pathway, a user usually has little else to look at while standing and waiting to reach the end of the line. In the instant application, the user at least will be forced to look at the messages presented in this elongate path of movement. As a result, at some point in the process, unless the individual walking in the pathway is thoroughly engaged in conversation with another person, they will almost inevitably look at the floor mat and observe the advertising and promotional messages. Thus, in substance, it is a dramatic difference to contend that there is a floor mat of the type in Ney et al. and Blum, and another to contend that the same message is present in this elongate pathway leading to the end-of-the-line position.

K. Claims 15-20, 24 and 26 Dealing with Mat Construction Are Not Obvious.

Several of the claims in the instant application, such as Claims 15-20, 24 and 36, for example, relate to the plural layer

mat construction and comprise the first layer of a transparent polycarbonate material and the second layer of a styrene based copolymer and, particularly, acrylonitrile butadiene styrene copolymer. The polycarbonate layer provides a weight and thickness to the mat precluding edge curl on a ground surface and the ABS, that is, the styrene-based copolymer, provides properties which allow the mat to be rolled. There is also a bonding layer which secures the two layers together.

The Examiner attempts to meet these limitations by reference to the Ney U.S. patent No. 6,319,592, contending that Ney discloses a polycarbonate first layer. Ney also uses a second layer, described as a protective layer, but does not define the material forming part of that second layer.

The Examiner therefore contends that this construction, as claimed by the applicant, is met by Ney et al., which discloses a layer having a polycarbonate material, and, thereafter, contends that the second layer would have been obvious and absent any criticality. However, it is interesting to note that the applicant has only claimed these two layers consistently throughout the application. By definition, since the applicants have not provided substitute materials, the cited ABS, or acrylonitrile butadiene styrene material would not have been of an obvious matter of choice. In actuality, after considerable testing, the applicants found that this combination was most effective. It is, therefore,

believed that these claims, such as Claims 15-20 and 24 and 36, and the other claims in the application which call for this unique combination, recite a patentable combination.

In addition, many of the dependent claims call for the thicknesses of the material, such as the polycarbonate layer having a thickness of no more than one-fourth inch, and the ABS layer having a thickness of no greater than one-fourth inch. Again, it is not a matter of choice. The applicant had to find a mat which would remain flat and also which would allow for the fact that the mat would curl to be stored and transported. The references of record do not address this feature.

Finally, the Examiner stretches the references well beyond their teachings. The Examiner states, for example, that Hensler et al. discloses that mats can be used to lead a person to a destination. Nothing could be further from the truth. Hensler is merely a floor mat. It has phosphorescent stripes along its side. However, nothing in the four corners of Hensler suggests that it's going to lead anyone to anything. The Examiner contends that Gehweiler discloses appliquéés used to mark an outline to a path. Again, that is absolutely untrue. Gehweiler discloses appliquéés. It does not say what it intends to do with those appliquéés. The Examiner contends that Blum discloses indicia which can be placed to provide information on flooring. Again, while that may be true, there is nothing which suggests the forming of a pathway with this

indicia or an end-of-the-line of that pathway. In short, the Examiner has had to stretch the prior art in a gross attempt to allege that these references read upon the instant application.

L. Commercial Success.

It must be recognized that this invention is not some problematic or fanciful anticipation. It is, indeed, a living reality. This system has been and is being used in numerous public institutions, as for example, airports, as for example, Burbank Airport, in California, various restaurants, such as, for example, MacDonald's restaurants, pharmacies, such as, for example, Sav-On Pharmacies, etc. Even if there is any doubt as to the patentability of this invention, and there should not be, it would seem that this success with respect to claims of this application should provide for allowability of the claims.

The applicants in the parent patent application have submitted a Declaration of Use showing the success of the system. The reiterate systems of this type have been used in airports, as for example, Burbank Airport, in the Los Angeles area of California. They have been used by numerous pharmacies, particularly in view of the recent HIPPO laws in which privacy of patients must be recognized. Now, the pharmacy is able to keep patents in line from receiving information about the prescriptions given to their predecessor in line. The system of the invention completely satisfies that requirement. As a simple example, Sav-On

Pharmacies, a national chain (by different names in different parts of the country) have been highly effective. This type of system has also found use in numerous other establishments. The declaration of the inventor has supported this position.

Even if there is any doubt as to the patentability of this invention, and there should not be, it would suggest that this commercial success with respect to the claims in issue should deem an allowance of the application. Gusmer v. Parker (DC.DC.) 206 USPQ 971.

It becomes apparent that this invention is not some problematic or fanciful anticipation. It is, indeed, a living reality. When the system is being used in public institutions, such as airports, pharmacies, restaurants, and the like, it becomes more than merely a so-called "paper patent".

Finally, it is worth mention that in three different applications, albeit with similar subject matter, essentially the same prior art was applied, and moreover, was applied in essentially the same way. One would expect some variance in the decisions if truly independent. It becomes apparent that there was at least one guiding force in the negative results in all three applications. Therefore, it would be unfair to conclude that three independent Examiners operating independently from one another came to the same conclusion. Rather, it is apparent that some independent force guided the decisions in all three applications.

IX.

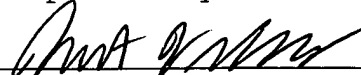
CONCLUSION

The Examiner has erred in numerous ways and with every basis of rejection in finally rejecting the claims in the instant application. Specifically, and at the outset, the Examiner the erred in dismissing limitations in the claims as being allegedly functional, and, essentially, overlooking the unique aspect of the invention. Secondly, the Examiner has attempted to pigeonhole the system of the invention into the form of a floor mat, and with that limited scope, adopted the limited thinking that a floor mat is responsive to a plurality of mats designed to cause individuals to walk in a certain path to an end-of-the-line position and a destination beyond.

Thirdly, the Examiner has erred completely in applying the prior art and stretching the prior art well beyond its intended meanings. Quickly, the Examiner has dismissed critical limitations in the claims by contending they are obvious with no basis of supporting that contention. In substance, when the Board reviews the distorted treatment in rejecting the claims, it is believed that an allowance will be compelled.

Dated: January 26, 2006

Respectfully submitted,



ROBERT J. SCHAAP
Registration No. 20,577
Attorney for Applicant
(818) 346-6555



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF:)

DAN PHARO)

SERIAL NO.)

FILED: CONTEMPORANEOUSLY HEREWITH)

GROUP ART UNIT NO.)

TITLE: PERSONNEL GUIDANCE)
AND LOCATION CONTROL)
SYSTEM)

EXAMINER:)

DECLARATION OF DAN PHARO

UNDER 37 C.F.R. 1.132

Commissioner of Patents
and Trademarks
Washington, D.C. 20231

Sir:

NOW COMES DAN PHARO, and states and declares as follows:

That I am the applicant in and the inventor of the subject matter in the foregoing continuation patent application and the parent patent application Serial No. 08/741,619, filed October 30, 1996, therefor.

That after conceiving of the invention defined and claimed in this application, I started a small business entitled "Next Systems, Inc.", a corporation of the State of California, and having a principal place of business in Valencia, California.

The invention described and claimed in this application has been used in several private and public business operations.

Attached hereto as Exhibit "A" is a photograph showing the use of the system forming part of the present invention in a restaurant environment. Attached hereto as Exhibit "B" is a photograph showing the use of the system of the present invention in a different restaurant, which is typically in the form of a fast food restaurant. Attached hereto as Exhibit "C" is a photograph showing the system of the present invention in a McDonald's restaurant.

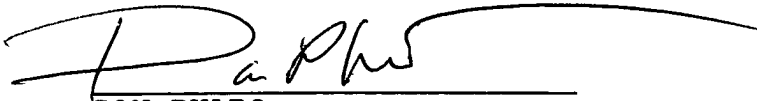
Attached hereto as Exhibit "D" is a photograph showing the use of the system of the present invention at Burbank Airport. In this particular photograph, the waiting line to reach a reservation agent is shown and used highly effectively.

Attached hereto as Exhibits "E", "F" and "G" are additional photographs showing the use of the system of the present invention in an airport. Attached hereto as Exhibit "H" is a photograph showing the use of the system of the present invention in a supermarket. Finally, attached hereto as Exhibit "I" is a photocopy of a write-up in the November 21, 1997 edition of the Daily News newspaper in the Los Angeles area.

The system in the present invention as shown in the photographs clearly demonstrate the effectiveness and the applicability of this system for controlling the guidance and location of individuals. Since its inception, the system has met with a great deal of enthusiasm and several large organizations have expressed substantial interest in the system and others have purchased the system.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Dated: 8/17/, 1999


DAN PHARO

PHARO
DAN. DEC

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: COMMISSIONER OF PATENTS AND TRADEMARKS, WASHINGTON, D.C. 20231 on _____, 1999.

(Signature) Date of Signature: _____, 1999

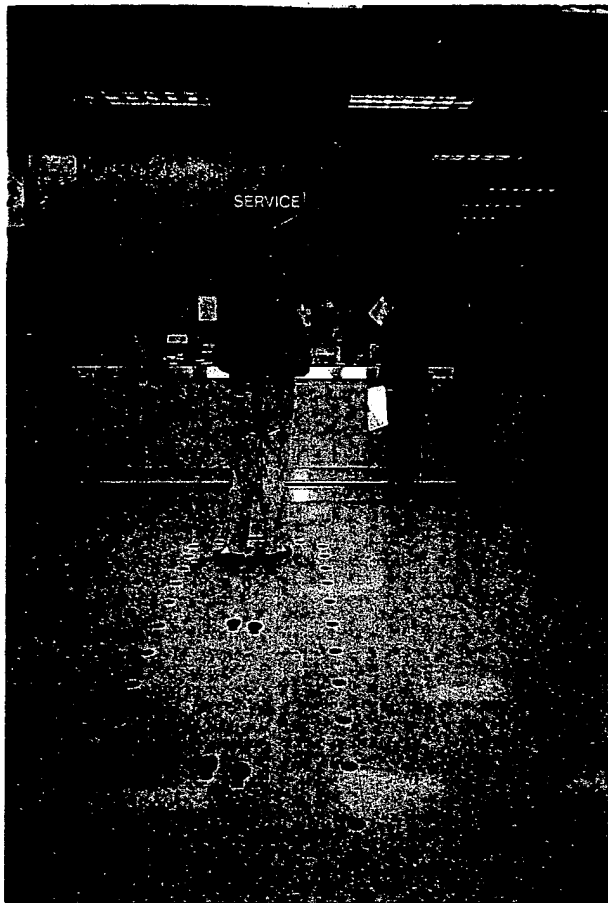


EXHIBIT "A"



EXHIBIT "B"

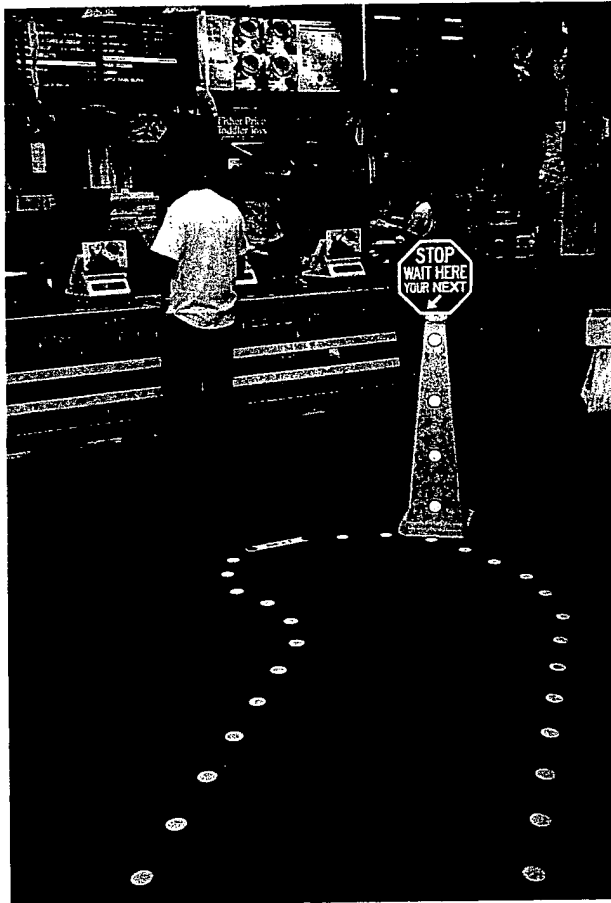


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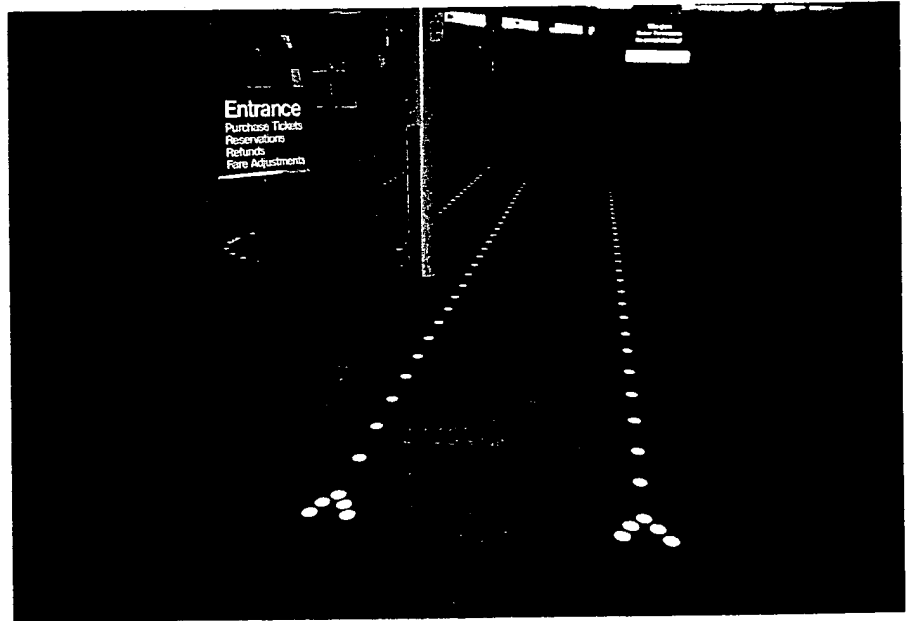


EXHIBIT "D"

C-8



EXHIBIT "E"

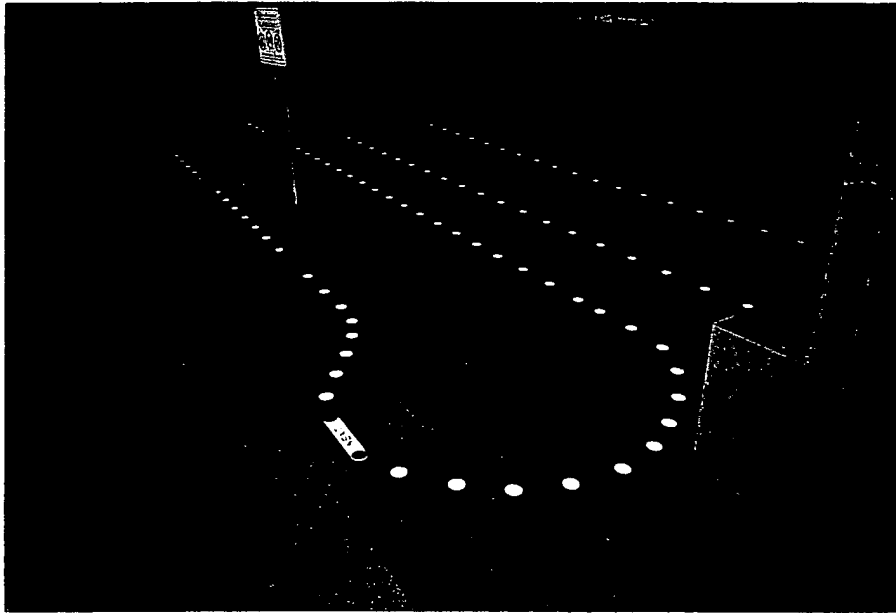


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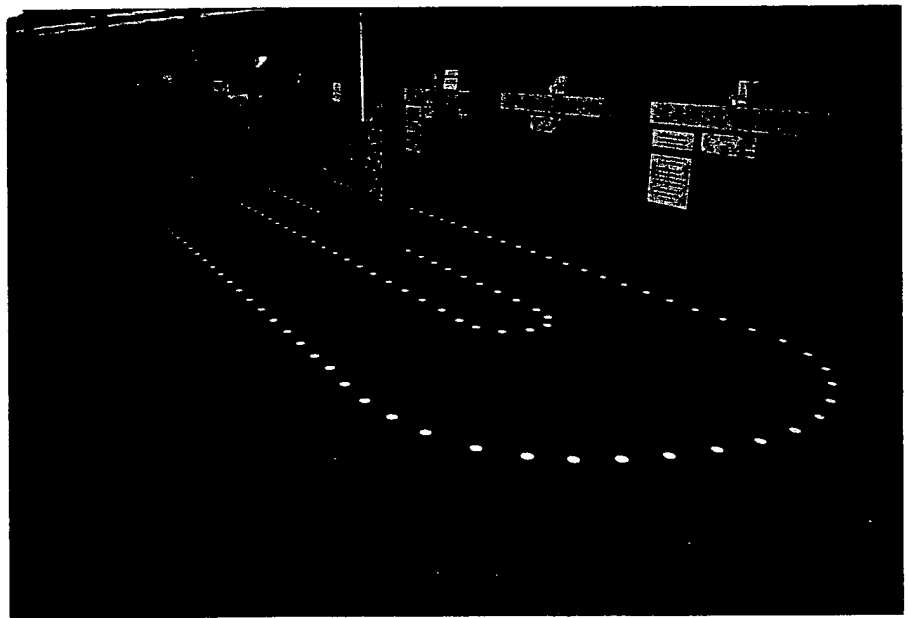


EXHIBIT "G"

C-11



EXHIBIT "H"

Inventor's dot system hits the spot

DOTS / From Page 1



Right now, he operates NEXT systems Inc. out of a small office in the Valencia Industrial Center and contracts out the actual manufacturing to Santa Clarita companies.

It's not Pharo's first invention. In the mid-1980s, he invented an inflatable packaging for gifts and fragile objects, and he eventually founded Valencia-based Air Packaging Technologies Inc. to manufacture and market it.

Air Packaging's annual sales range from \$1 million to \$2 million, but the company has been operating at a net loss. "Next year is our turn-around year, according to our projections," Pharo said.

The idea for NEXT sprang to Pharo's mind in 1989 after he witnessed a near-fight at a Century City automatic teller machine. Although there was a small queue for two machines, a newcomer bypassed the line and stepped up to one of the ATMs. Others got angry.

"It just about broke out into a fistfight," Pharo said.

Nothing marked where those waiting to use the ATMs should have been standing, Pharo said. There was no room to create a line just on the sidewalk, and those in the waiting group were "clustered and flustered," he added.

He thought there must be a simple way to mark out a queue and prevent replays of such scenes. Soon he got the idea of using dots, but he was too busy running Air Packaging Technologies to do anything with it. He just logged a note of his idea and hid

it away.

He returned to the dots a year ago and filed for a patent in October 1996. In March he stepped down as chairman of Air Packaging Technologies to concentrate on NEXT, although he retains a large stake in the packaging company.

So far he has used about \$160,000 in personal start-up capital for NEXT. The system sells for \$300 or more, depending on the length.

The dots are made of stainless steel and powder-coated so they are not slippery. They're dome shaped, only one-eighth of an inch at their highest point and thinner than a penny around the edge, so no one is likely to trip on them, Pharo said.

With their simple design, they are easy to understand. Customers can tell at a glance where the line forms. "I was surprised how fast the people caught on to them," Pharo said.

LOGJAM COULD LAST TWO MONTHS

A Union Pacific vice president said Thursday that small mistakes led to the massive logjam that clogged West Coast ports and left Midwestern grain sitting on the ground, but the company is digging its way out of the mess.

Robert Starzel, vice president for UP's western region, said the congestion is beginning to clear, although operations probably won't return to normal until late December or early January. He spoke during a California Public Utility Commission hearing in Long Beach.

Starzel also said the company seriously underestimated an increase in volume that added to the railroad's woes. The twin ports of Los Angeles and Long Beach, for example, have had increases of nearly 20 percent in container car-

MARKET SUMMARY

INDEXES					DIARIES			NYSE				AMEX				NASDAQ			
S & P	High	Low	Close	Change	NYSE	Yesterday	Prev. Day	Most Active	Vol.	Last	Chg.	Most Active	Vol.	Last	Chg.	Most Active	Vol.	Last	Chg.
AP 100	923.02	906.05	919.70	+13.69	Advanced	2058	1532	Compag	9,143,800	66 1/2	+1 1/2	SPDR	4,022,700	90 3/4	+1 1/2	ApplMnt	18,401,200	37 3/4	+2 3/4
AP 500	961.83	944.59	958.39	+13.80	Declined	828	1417	AT&T	8,282,700	54 1/2	+1 1/2	Hasbro	2,446,800	25	-1	Intel	13,477,700	60 3/4	+1 1/2
AP MidCap	324.31	319.14	323.80	+4.66	Unchanged	483	811	GenElec	3,490,400	71 1/2	+1 1/2	Harten	2,042,200	5 1/2	+5 1/2	Quantum	11,568,500	28 1/2	+2 1/2
					Total Issues	8384	3480	LillyPh	5,401,200	84 1/2	+7/8	EchoDay	1,351,100	2 1/2	+7/8	DellComp	10,828,100	85 1/2	+2 1/2
Dow Jones	High	Low	Close	Change	New Highs	201	88	TelBrazil	5,312,200	101	+1/4	ViaSat	1,218,600	34 1/2	+3/4	WorldCom	10,764,700	32 1/2	+1 1/2
Industrial	7829.8	7718.2	7828.8	+101.67	New Lows	44	60	MicroT	5,101,800	28	+2 1/2	GreyWolf	1,030,100	7 1/2	+3/4	3Com	10,180,800	34 1/2	+1 1/2
Transportation	3166.8	3102.0	3171.2	+64.44	Up Yr	891,782,580	291,104,040	CocaCl	5,048,200	63 1/2	+1 1/2	UTI Eng	946,800	31 1/2	+3 1/2	Cisco	7,362,700	85 1/2	+2 1/2
Utilities	257.4	251.3	256.5	+5.20	Down Vol	124,189,890	220,178,630	SJenGen	5,081,100	9 1/2	-1/2	TWA	752,600	7 1/2	+7/8	Microsoft	8,710,100	138 3/4	+1 1/2
Composite	2501.8	2501.8	2544.5	+42.70	Total Vol	717,892,490	633,849,530	Seagate	4,785,400	23 7/8	+7/8	Nabors	570,400	38 1/2	+1 1/2	SunMicro	8,504,800	37	+1 1/2
					Amex	Yesterday	Prev. Day	Gainers	Last	Chg.	Pct.	Gainers	Last	Chg.	Pct.	Gainers	Last	Chg.	Pct.
NYSE	High	Low	Close	Change	Advanced	316	245	HampQu	34 1/2	+5 1/2	+20.3	NitroTch	12 1/2	+1 1/2	+15.3	Aasiron	7 1/2	+3	+83.2
Composite	501.99	493.90	500.54	+6.64	Declined	264	326	CooperSB	18 1/2	+2 1/2	+16.2	Hmisph wt	2 1/2	+1/2	+12.9	UnrytM	3 1/2	+1 1/2	+55.6
Industrial	828.85	816.62	824.75	+7.93	Unchanged	194	147	Ground n	10 1/2	+1 1/2	+13.0	EchoDay	2 1/2	+1/2	+12.5	Rambus	5 1/2	+1 1/2	+11.7

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Dots mark the spot



John McCoy/Daily News

Southwest Airlines passengers at Burbank Airport line up in a rope-free queue marked by dots and footprints in stainless steel.

Inventor frees crowds from knowing ropes

By Enrique Rivero
Daily News Staff Writer

Dan Pharo can keep unruly crowds in line without raising his voice or lifting a finger.

The Valencia inventor has come up with what he calls the NEXT Customer Line-up System that marks out queues in public places such as airports, banks and fast food restaurants. Less obtrusive than the traditional stanchions and ropes, the system is intended to maintain order while giving customers a bit of freedom and elbow room.

Dots on the floor outline the queue's boundaries and footprints lead customers to the end of the line, where they're next up at the counter, register or other destination.

"We call them freedom lines. They give people total freedom; yet they're informing people where to stand," said Pharo, 45.

The system already has been adopted by

businesses including Southwest Airlines at Burbank Airport, Los Angeles-area Sav-on drug stores and a McDonald's restaurant, according to Pharo.

Southwest has the system at its five gates and at the ticket counter, station manager Larry Pitts said.

He expects the system will help control crowds during Thanksgiving week, which is typically the busiest of the year. The system has helped out tremendously at very busy times, Pitts said.

Pharo hopes to eventually create a network of distributors who will buy the system from him and sell it across the country and Europe.



See DOTS / Page 2



Dan Pharo shows one of the steel dots in his queue-marking system.

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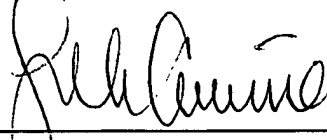
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Daniel Pharo et al.
Serial No. 09/758,934

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APPENDIX A

(Claims)

A copy of the claims pursuant to 37 CFR 1.192(c)(9) is included in the Appendix.

Appended hereto are copies of Claims 1-13, 15-18, 21, and 24-36 on appeal.

A self contained and complete personnel guidance and location control system for guiding a group of walking pedestrian individuals into a line thereof and controlling movement thereof, said guidance and location control system comprising:

- a) at least one ground cover substrate for disposition on a ground surface;
- b) at least one end of line element associated with an endmost of said cover substrates if more than one and in a fixed location thereon for defining an end of a line of the group of walking pedestrian individuals and representing a waiting location for the individual at the front end of the line so that the individuals may proceed to a destination in advance of the front end of the line in an orderly and successive manner;
- c) a pair of spaced apart path forming members associated with each of said ground cover substrates in a fixed location thereon relative to the end of line element, said path forming members defining pathway boundaries at the sides thereof and extending from regions in proximity to opposite ends of the end of line element to define a pathway of movement for the group of pedestrian individuals and which pathway is sized and arranged to induce

- individuals to enter and proceed in said pathway;
- d) a plurality of movement indicator elements on said pathway between the spaced apart pathway boundaries and being presented in such manner to suggest that the individuals in the line walk in the pedestrian pathway and to depict the direction of movement in that pathway so that the individuals move to the end of the line position, said movement indicator elements cooperating with the path forming elements to present a desired pathway and a direction of movement to an end of a line position and to a destination in advance of that end of the line position; and
- e) means associated with said end of line element and small discrete path forming members for locating same with the cover substrates, whereby the ground cover substrate and end of line element and path forming members can be located on the ground surface presenting the desired pathway of movement to enable the orderly and controlled movement of a group of walking pedestrian individuals into one or more lines of pedestrian individuals to a destination and where all of the components necessary for the guidance and location control

system are incorporated on at least one or more of
said ground cover substrates.

2

The personnel guidance and location control system of Claim 28 further characterized in that the guide post comprises a plate and an upstanding member extending from said plate and located at the edge of one of said substrates for fixed location at a change of direction of the path forming elements on said last named substrate.

3

The personnel guidance and location control system of Claim 2 further characterized in that said guide post is relatively light in weight and movable from one location to another.

4

The personnel guidance and location control system of Claim 28 further characterized in that said guide post does not primarily serve as a physical barrier but is visually apparent to guide the pedestrian individuals.

The personnel guidance and location control system of Claim 1 further characterized in that a means is associated with the underside of the end of line element and with the underside of the small discrete path forming members for securing same to said at least one ground cover substrate.

A system for controlling movement and standing locations for a group of pedestrian individuals in an orderly fashion and presenting informational messages in connection therewith, said system comprising:

- a) a ground cover substrate for disposition on a ground surface;
- b) at least one end of line element associated with said cover substrate and in a fixed location thereon for defining an end of a line of the group of walking pedestrian individuals and representing a waiting location for the individual at the front end of the line so that the individuals may proceed to a destination in advance of the front end of the line in an orderly and successive manner;
- c) a plurality of small discrete path forming elements associated with said cover substrate in a fixed location thereon relative to the end of line element and extending from regions in proximity to opposite ends of the end of line element to define a pathway of movement for the group of pedestrian individuals and pathway boundaries at the sides thereof, and which pathway is sized and arranged to induce individuals to enter and proceed in said pathway;

- d) a plurality of movement indicator elements on said pathway of movement between the spaced apart pathway boundaries and being presented in such manner to suggest that the individuals in the line walk in the pedestrian pathway and face in a way to depict the direction of movement in that pathway so that the individuals move to the end of the line position or wait at the end of the line position, said movement indicator elements cooperating with the path forming members to present a desired pathway and a direction to a destination;
- e) a first informational message and a second informational message and at least one of said first and second informational messages having information related to the purpose of the pedestrian individuals being controlled in movement, said first informational message being located at said substrate and which is substitutable so that said second informational substrate may be readily and quickly substituted at said substrate for said first informational message so that only said second message is visibly presented; and
- f) said substrate comprising at least a first layer of a relatively rigid material, which has a generally

transparent portion allowing one of said informational messages on said substrate to show therethrough such that a pedestrian individual being controlled in movement or in a standing position will be in a position to readily observe said informational message; said first layer providing sufficient weight to the substrate so that edges do not curl when disposed on a ground substrate; and

- g) whereby all of the components necessary for controlling movement and standing locations for the group of pedestrian individuals are present at said substrate; and further where said message is visually prominent and may have relation to the direction of movement or standing location of the pedestrian individuals.

The system of Claim 6 further characterized in that said first informational message is located at an underside of said first layer and under said generally transparent portion of said first layer so that said first informational message appears directly through said first layer.

8

The system of Claim 6 further characterized in that the element representing a standing or waiting position is removable from said substrate so that a new element can be substituted therefor.

9

The system of Claim 8 further characterized in that said element representing a standing or waiting position is fitted into a recess formed in the ground cover substrate for holding same.

10

The system of Claim 7 further characterized in that the first informational message is comprised of ink which is printed on the underside of the first layer.

11

The system of Claim 7 further characterized in that the first informational message is printed on a sheet material located at an underside of said first layer and appears through a transparent portion of said first layer.

12

The system of Claim 7 further characterized in that said second informational message can be substituted for said first informational message by applying an applique to said first layer located over the first informational message.

13

The system of Claim 30 further characterized in that said first layer is comprised of a polycarbonate material and said second layer is comprised of an acrylonitrile butadiene styrene copolymer and where said first layer has a thickness of no greater than one-fourth inch and said second layer has a thickness of no greater than one-fourth inch.

14 (Canceled)

A personnel location and control system comprising at least one mat for disposition on a ground surface and for currently guiding and locating a group of pedestrian individuals in a pedestrian pathway and also presenting an informational message to said pedestrian individuals during the movement of the individuals or standing at a location on said mat, said mat comprising:

- a) a ground cover substrate for disposition on a ground surface;
- b) said ground cover substrate being comprised of
 - 1) a first layer comprising a relatively rigid and generally transparent polycarbonate material, said substrate being of sufficient weight and thickness that the edges of the substrate do not curl when laid on a ground surface;
 - 2) a relatively flexible second layer comprised of a styrene based copolymer material and being secured to said first layer, said second layer providing those properties which allow the mat to be rolled and which also provide some degree of rigidity to the mat; and

- 3) a bonding layer between said first and second layers to cause a bonding of the two to allow the substrate to be rolled or laid as a mat;
- c) a first informational message located on the underside of the first layer in such manner that the message is observable by pedestrian individuals during movement on the mat or at the standing location; and
- d) a second informational message adapted for being substituted for the first informational message to then only allow the second informational message to be displayed.

16

The system of Claim 15 further characterized in that a group of elements is associated with said ground cover substrate to define a pathway of movement for guiding the movement of the pedestrian individuals or to define a standing location for each of the pedestrian individuals.

17

The system of Claim 16 further characterized in that said group of elements comprises a plurality of small discrete elements defining a pedestrian pathway of movement for the pedestrian

individuals and an elongate element defining an end of the line position for a person at the head of the line of pedestrian individuals.

18

The system of Claim 15 further characterized in that said first informational message is printed on the underside of said first layer and is located between said first layer and said second layer.

19-20 (Cancelled)

A system for controlling movement and for defining a standing location of pedestrian individuals and presenting an informational message in connection therewith, said system comprising:

- a) a ground cover substrate for disposition on a ground surface;
- b) said substrate comprising at least a first layer of a relatively rigid material, which has a generally transparent portion allowing an informational message to show therethrough and which provides sufficient weight and a degree of rigidity to the substrate so that edges do not curl when disposed on a ground surface;
- c) at least one element associated with said ground cover substrate for representing a standing or waiting position for a pedestrian individual or a position in which an activity may take place; and
- d) an informational message located at said substrate in the form of a plurality of footsteps which provides information relating to a direction of moving or standing, said informational message also being related to the purpose the pedestrian individuals are standing or walking on said ground cover substrate so that the informational message

and that the at least one element operate
cooperatively together.

22-23 (Cancelled)

A system for controlling movement and for defining a standing location of pedestrian individuals and presenting an informational message in connection therewith, said system comprising:

- a) a ground cover substrate for disposition on a ground surface;
- b) at least one element associated with said ground cover substrate for representing a standing or waiting position for a pedestrian individual or in which an activity may take place;
- c) a first informational message located at said substrate and which is substitutable so that a second informational message may be readily and quickly substituted at said substrate for said first informational message in such manner that only said second message is visibly presented; and
- d) said substrate comprising a first layer of a relatively rigid polycarbonate material which is of sufficient weight and thickness that the edges of the substrate do not curl when laid on a ground surface, said first layer having a generally transparent portion allowing an informational message to show therethrough; and
- e) a second layer of a relatively flexible material formed of a styrene based copolymer secured to said

first layer, said second layer providing those properties which allow the substrate to be rolled and which also provide some degree of rigidity to the substrate which allows the substrate to be treated as a rigid mat.

A method of controlling the location and movement of one or more pedestrian individuals on a ground cover substrate and forming such pedestrian individuals in a line of such individuals to an end of a line position and to a destination in advance of the end of the line position and simultaneously providing an informational message to said one or more pedestrian individuals, said method comprising:

- a) applying a ground cover substrate to a ground surface and having an upper surface on said substrate for walking disposition by said one or more pedestrian individuals;
- b) providing an end of the line or waiting position defining element on said upper surface of said substrate in a fixed position thereon to represent an end of a line position of the group of walking pedestrian individuals or representing a waiting location for the individual at the front end of the line so that the individuals in the line may proceed to a destination or to a waiting position in advance of the front end of the line in an orderly and successive manner;
- c) also providing a pathway of movement for the group of individuals by applying to said substrate a plurality of externally spaced apart path forming

members associated with said cover substrate in a fixed location thereon and extending in parallel lines of said path forming members relative to the end of line element and extending from regions in proximity to opposite ends of the end of line element;

- d) arranging said path forming members in each line to be spaced apart from the opposite line of path forming members to form a desired pathway of movement with the path forming members defining pathway boundaries at the sides thereof and to thereby enable the orderly and controlled movement of a group of pedestrian individuals into one or more lines of same to a destination or waiting position, also locating the end of line element and path forming members on the ground surface to avoid obstruction and obtain an optimum pathway of movement; and
- e) providing a plurality of movement indicator elements on said pathway between the spaced apart boundaries and being presented in such manner to suggest that the individuals in the line walk in the pedestrian pathway and to depict the direction of movement in that pathway so that the individuals move to the end of the line position, said movement

indicator elements cooperating with the path forming elements to present a desired pathway and a direction of movement to the end of the line position and to an destination in advance of that end of the line position.

26

The system of Claim 15 further characterized in that said styrene based copolymer is an acrylonitrile butadiene styrene copolymer.

27

The system of Claim 24 further characterized in that said styrene based copolymer is an acrylonitrile butadiene styrene copolymer.

28

The personnel guidance and location control system of Claim 1 further characterized in that said upper surface of said substrate is relatively free of elements which would obstruct the prominence of the end of the line element and the lines of path forming elements and the plurality of movement indicator elements so that the pathway is not visually obstructed, said pathway being visibly prominent so that the individuals desiring to reach a destination

will be automatically induced to enter the pathway of movement in an orderly manner.

29

The personnel guidance and location control system of Claim 28 further characterized in that the width of the pathway is sufficiently narrow so that individuals in the pathway will not be inclined to walk in front of an individual who precedes them providing for an orderly movement of the individuals to a destination in advance of the end of the pathway, the end of the line element also being spaced apart from said destination so that there is no crowding of individuals at or around that destination.

30

The personnel guidance and location control system of Claim 1 further characterized in that at least one upstanding guide post is located in proximity to an edge of said at least one ground cover substrate and at a region of the substrate when the pathway of movement changes direction; said guide post effectively defining a change in direction of the pathway and also cooperating with the path forming members which also show a change of direction to alert the group of pedestrian individuals in the pathway of a potential change of direction of the pathway in advance of reaching that change of direction.

31

The personnel guidance and location control system of Claim 1 further characterized in that said path forming members are each comprised of a plurality of spaced apart small discrete path forming elements.

32

The personnel guidance and location control system of Claim 1 further characterized in that the plurality of movement indicator elements are located at said mat and have a representation of a footprint to cause the pedestrian individuals to enter into and follow the pathway.

33

The personnel guidance and location control system of Claim 32 further characterized in that the movement indicator elements are footprints.

34

The personnel guidance and location control system of Claim 6 further characterized in that said substrate comprises a second layer of a relatively flexible material secured to said first layer and which aids in allowing the substrate to be rolled and also to be treated as a rigid mat.

The personnel guidance and location control system of Claim 17 further characterized in that a plurality of movement indicator elements are located on said pathway between the spaced apart pathway boundaries and being presented in such manner to suggest that the individuals arrange themselves in a line walk in the pedestrian pathway and to depict the direction of movement in that pathway so that the individuals move to the end of the line position, said movement indicator elements presenting a desired pathway and a direction of movement to an end of a line position and to a destination in advance of that end of the line position.

A self contained and complete personnel guidance and location control system for guiding a group of walking pedestrian individuals into a line thereof and controlling movement thereof, said guidance and location control system comprising:

- a) at least one ground cover substrate for disposition on a ground surface;
- b) said ground cover substrate being comprised of:
 - 1) a first layer comprising a relatively rigid and generally transparent polycarbonate material, said substrate being of sufficient weight and thickness that the edges of the substrate do not curl when laid on a ground surface;
 - 2) a relatively flexible second layer comprised of a styrene based copolymer material and being secured to said first layer, said second layer providing those properties which allow the mat to be rolled and which also provide some degree of rigidity to the mat; and
 - 3) a bonding layer between said first and second layers to cause a bonding of the two to allow the substrate to be rolled or laid as a mat;

- c) at least one end of line element associated with an endmost of said cover substrates if more than one and in a fixed location thereon for defining an end of a line of the group of walking pedestrian individuals and representing a waiting location for the individual at the front end of the line so that the individuals may proceed to a destination in advance of the front end of the line in an orderly and successive manner;
- d) a pair of spaced apart path forming members associated with each of said ground cover substrates in a fixed location thereon relative to the end of line element, said path forming members defining pathway boundaries at the sides thereof and extending from regions in proximity to opposite ends of the end of line element to define a pathway of movement for the group of pedestrian individuals and which pathway is sized and arranged to induce individuals to enter and proceed in said pathway;
- e) a plurality of movement indicator elements on said pathway between the spaced apart pathway boundaries and being presented in such manner to suggest that the individuals in the line walk in the pedestrian pathway and to depict the direction of movement in that pathway so that the individuals move to the

end of the line position, said movement indicator elements cooperating with the path forming elements to present a desired pathway and a direction of movement to an end of a line position and to a destination in advance of that end of the line position; and

- f) means associated with said end of line element and small discrete path forming members for locating same with the cover substrates, whereby the ground cover substrate and end of line element and path forming members can be located on the ground surface presenting the desired pathway of movement to enable the orderly and controlled movement of a group of walking pedestrian individuals into one or more lines of pedestrian individuals to a destination and where all of the components necessary for the guidance and location control system are incorporated on at least one or more of said ground cover substrates.

APPENDIX B

(Evidence)

DISTINGUISHMENT OF THE CLAIMS DEALING WITH THE
BASIC GUIDANCE AND LOCATION SYSTEM FROM EACH OF THE
CO-PENDING RELATED PATENT APPLICATIONS NOW ON APPEAL

The claims in this application No. 09/758,934 patentably distinguish over the claims in the two co-pending related patent applications of the same applicants, in that the copending applications do not define the fact that the pathways are of a width sufficient to receive a line of individuals and with the pathway boundaries defining the boundaries of movement on the sides for each individual, and which appears in application No. 10/638,871. Those claims also dealing with the pathway of movement in this application No. 09/758,934 call for the indicator elements, suggesting the direction of movement in the pathway and which effectively cooperate with the informational messages.

The claims in this application No. 09/758,934 similarly do not call for the fact that the upper surface of the substrate is relatively free of elements which would obstruct the prominence of the end-of-the-line element and the line of path forming elements. They similarly do not call for the fact that the width is sufficiently narrow so that individuals will not be inclined to walk in front of an individual who precedes them.

Further, certain of the claims in this application No. 09/758,934 call for the multilayer construction of the substrates, including the first polycarbonate layer and the second, styrene based copolymer layer, as well as a bonding layer therebetween.

The claims in this application similarly do not call for the fact that the width is sufficiently narrow so that individuals will not be inclined to walk in front of an individual who precedes them.

More specifically, Claims 1-5 and 29-34 of this application distinguish over Claims 1-5 and 25-35 of the '934 application, as follows:

The claims of application No. 10/635,871 call for the fact that the pathway is of a width sufficient to receive a group of individuals and arrange to guide the group of individuals to the end-of-the-line position, and that they are arranged to conform to an existing environment for optimum placement of a group of pedestrian individuals. Moreover, the claims of the application Serial No. 10/635,871 define over the claims of this application Serial No. 09/758,934 in that the claims in application Serial No. 10/635,871 call for informational messages on the upper surfaces of the substrate, which are related to the facility at which the pedestrian individuals are being serviced. This important fact does not appear in the claims of application Serial No. 09/758,934.

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